IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

OHIO LEGAL RIGHTS SERVICE,	:	**Case No. 2:12-CV-196**
	:	
Plaintiff,	:	**Judge Frost**
	:	
-vs-	:	**Magistrate Judge Deavers**
	:	
COLUMBUS CITY SCHOOLS,	:	
	:	
Defendant.	:	

ANSWER OF DEFENDANT COLUMBUS CITY SCHOOLS

Now come Defendant Columbus City Schools for its answer to Plaintiffs' complaint and says as follows:

First Defense

1. Defendant admits that the complaint states that it is an action for declaratory and injunctive relief but denies the remaining allegations in paragraph one.

2. Defendant lacks knowledge or information sufficient to form a belief about the truth of and therefore denies the allegations contained in paragraph two of Plaintiff's complaint.

3. Defendant admits that Plaintiff is the protection and advocacy system created under federal and state law to protect and advocate for the rights of persons with developmental and other disabilities but the denies the remaining allegations in paragraph three of Plaintiff's Complaint.

4. Defendant admits the allegations contained in paragraph four of Plaintiff's complaint.

5. In response to paragraph five of Plaintiff's complaint, Defendant admits that conduct that is alleged in the complaint occurred, if at all, in this judicial district and that venue is proper.

6. Defendant admits the allegations contained in paragraph six and seven of Plaintiff's complaint.

7. In answer to paragraph eight of Plaintiff's complaint, Defendant admits that that Plaintiff's authority and responsibilities with respect to the investigation of complaints of abuse or neglect of individuals with disabilities are governed, in part, by 42 U.S.C. §15043(2)(A)(i)(b) and R.C. 5123.60(A).

8. In answer to paragraph nine of Plaintiff's complaint, Defendant denies that Columbus City Schools is a public school district and avers that the Columbus City School District is a city school district located in Franklin County, Ohio.

9. In answer to paragraph ten of Plaintiff's complaint, Defendant admits that the Columbus City School District receives state and federal funds to provide free and appropriate public educational services to students with disabilities, including students with cognitive deficits, who may be eligible for Plaintiff's services under 42 U.S.C. §15041 *et seq.*

10. Defendant lacks knowledge or information sufficient to form a belief about the truth of and therefore denies the allegations that a parent or guardian ("Parent") of an 18-year old student ("Student") who was being educated in a Columbus City School District high school ("High School") filed a complaint with Plaintiff or what the parent stated to Plaintiff that are contained in paragraph eleven, twelve and thirteen of Plaintiff's complaint.

11. Defendant admits the allegations contained in paragraph fourteen of Plaintiff's complaint.

12. Defendant admits that the seclusion room was a padded room with a metal door, that the door had two peep holes in order for staff to observe continuously a student placed in the room and that a foot latch lock was attached to the door as alleged in paragraph fifteen of Plaintiff's complaint. Defendant avers that the door was constructed only after technical assistance was sought and received from the Franklin County Board of Developmental Disabilities and other school districts concerning the appropriate size, lighting, ventilation and other requirements necessary to make the room a safe environment for children who needed to be isolated for limited periods of time for their own safety and that of other children and adults.

13. In answer to paragraph sixteen of Plaintiff's complaint, Defendant admits that Plaintiff's investigator met with Mary Ey, Defendant's Chief Officer, on December 21, 2011. Defendant further admits that Plaintiff's investigator made a request for documents and information as set forth in paragraph sixteen of Plaintiff's complaint. Defendant avers that, prior to this meeting, on November 29, 2011, Plaintiff's investigator sent an e-mail to the principal of the student's school, in which she demanded a "copy of the school's policy for the processing room. I look forward to receiving it. I would request that you respond in writing no later than December 9, 2011 to my concerns. The response should include a timeline of steps you are going to take to eliminate the use of the processing room" at the High School. Defendant further avers that Ms. Ey responded to the investigator's email that same day, offering meet to discuss Defendant's procedures and behavior intervention strategies and to provide her with copies of Defendant's procedures. Ms. Ey informed Plaintiff's investigator that she was "the Superintendent's Designee for all formal complaints, mediations and due process hearings. Please let me know if you have received a formal complaint from a parent regarding specific

concerns or district procedures. I am responsible for addressing these concerns with the parent and with you."

14. Defendant denies the allegations contained in paragraph seventeen of Plaintiff's complaint.

15. In answer to paragraph eighteen of Plaintiff's complaint, Plaintiff admits that it received a letter from an attorney for Plaintiff, but denies that it was sent on December 27, 2011. Defendant avers that the letter, which was dated and received on December 28, 2011, stated the position of Plaintiff with respect to its entitlement to certain records maintained by Defendant. Defendant avers that the letter did not state that Plaintiff received a complaint from a parent or guardian of any student attending Defendant's schools or that Plaintiff had determined that there was probable cause to believe that incidents of abuse or neglect occurred at the High School.

16. Defendant admits the allegations contained in paragraph nineteen of Plaintiff's complaint.

17. Defendant admits the allegations contained in paragraph twenty of Plaintiff's complaint and avers that the "discomfort" indicated by counsel for Defendant referred to her concern that Plaintiff had requested confidential student information which the District was obligated by federal and state law to keep confidential in the absence of information indicating either that parental consent had been given to Plaintiff to receive the information, that a parental complaint of abuse or neglect had been lodged with Plaintiff or that Plaintiff had made a determination that there was probable cause to believe that incidents of abuse or neglect occurred at the High School.

18. Defendant admits that its legal counsel sent a letter to Defendant's legal counsel dated January 27, 2012 as alleged in paragraph twenty-one of Plaintiff's complaint. Defendant

avers that enclosed with the letter were documents responsive to request numbers one, five and six; that the information described in request number eight was being compiled and would be provided; that the letter indicated that there were no documents responsive to requests numbers three and four; that the letter requested clarification of the documents sought in request number seven; and that the letter explained that Plaintiff was not legally entitled to the information sought in request number two.

19. Defendant admits that the letter referred to processing rooms as set forth in paragraph twenty-two of Plaintiff's complaint. Defendant lacks knowledge or information sufficient to form a belief about the truth of and therefore denies the allegation that "Plaintiff is unable to discern whether there are different types of rooms (variously referred to as 'quiet,' 'processing,' 'seclusion') used to seclude students with disabilities."

20. Defendant admits the allegations contained in paragraph twenty-three of Plaintiff's complaint.

21. In response to paragraph twenty-four of Plaintiff's complaint, Plaintiff admits that some of its schools, including elementary schools, have seclusion rooms.

22. Defendant denies the allegations contained in paragraph twenty-five of Plaintiff's complaint and avers that oversight over the use of seclusion rooms is provided by, among other things, a requirement that behavior/incident report must be completed each time a student is placed in a seclusion room and provided to the school principal by the end of the day, is monitored by the student's Individualized Education Program team and through parental notification.

23. In response to paragraph twenty-six of Plaintiff's complaint, Defendant denies it allows the use of "basket holds" on any student in its schools. Defendant admits that an older

document provided to Plaintiff in response to its request for records indicated that basket holds could be used in appropriate circumstances, but avers that such techniques are no longer allowed.

24. Defendant denies the allegations contained in paragraph twenty-seven of Plaintiff's complaint and avers that it is Defendant's standard procedure to acquaint parents with seclusion rooms during the development of their children's Individualized Education Program and to inform them when their children are placed in a seclusion room.

25. Defendant admits allegations contained in paragraph twenty-eight of Plaintiff's complaint with respect to the Student except that it denies the allegations with respect to information regarding the Student.

26. Defendant admits that Plaintiff's investigator sent a request for records and a release from the Parent of the Student to the principal of the High School but denies the remaining allegations contained in paragraph twenty-nine of Plaintiff's complaint.

27. Defendant denies the allegations contained in paragraphs thirty and thirty-one of Plaintiff's complaint.

28. In response to the allegations contained in paragraph thirty-two of Plaintiff's complaint, Defendant incorporates the admissions, denials and averments contained in paragraphs one through twenty-five of this answer.

29. Defendant admits the allegations contained in paragraph thirty-three of Plaintiff's complaint.

30. With respect to paragraph thirty-four of Plaintiff's complaint, Defendant admits that 42 U.S.C. §15043(a)(2)(I)(i), (iii) delineates the circumstances when a system is entitled to access to records of an individual without the consent of his or her guardian.

31. With respect to paragraph thirty-five of Plaintiff's complaint, Defendant admits that 42 U.S.C. §15043(a)(2)(J)(i) states that the system shall " have access to the records of individuals described in subparagraphs (B) and (I), and other records that are relevant to conducting an investigation, under the circumstances described in those subparagraphs, not later than 3 business days after the system makes a written request for the records involved."

32. In response to paragraph thirty-six of Plaintiff's complaint, Defendant admits that 45 C.F.R. §1386.22(i) states that "[i]f a system is denied access to facilities and its programs, individuals with developmental disabilities, or records covered by the Act it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name and address of the legal guardian, conservator, or other legal representative of an individual with developmental disabilities."

33. Defendant denies the allegations contained in paragraphs thirty-seven through thirty-nine of Plaintiff's complaint.

34. Defendant denies each and every allegation contained in Plaintiff's complaint not specifically admitted in its answer thereto.

Second Defense

35. The Columbus City Schools is not *sui juris.*

36. Plaintiff has failed to state a claim upon which relief can be granted.

Third Defense

37. Plaintiff's investigator sent a request for the records of the Student and a release signed by the Parent on February 14, 2012 to the principal of the High School.

38. Plaintiff failed to provide or inform Mary Ey of the request, even though the investigator who made the request on behalf of Plaintiff had been advised in an e-mail dated

November 29, 2011, that Ms. Ey was the superintendent's designee for all formal complaints, mediations and due process hearings. Nor was Defendant's legal counsel informed, even though, as alleged in paragraphs eighteen through twenty-three, Plaintiff's legal counsel had made requests for records requests addressed to her.

39. Defendant's legal counsel learned of the request and release only upon receipt of Plaintiff's complaint. Thereafter, copies of those documents were obtained and were were provided to Plaintiff on March 14, 2012.

40. The action for declaratory judgment and an injunction, insofar as it applies to Plaintiff's demand for copies of the Student's records, is moot.

Fourth Defense

41. It was not until receipt of a letter from Plaintiff's counsel dated February 3, 2012, that Defendant was made aware that a parent had made a complaint to Plaintiff or that Plaintiff had determined that there was probable cause to believe that incidents of abuse or neglect occurred at the High School OLRS concerning the use of seclusion rooms at the High School or that Plaintiff had made a finding of probable cause.

42. Defendant has not refused since receipt of the letter dated February 2, 2012 and prior to the filing of this action to provide to Plaintiff documents it requested.

Respectfully Submitted,

/s/ Loren L. Braverman
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Trial Attorney for Defendant Columbus City Schools

CERTIFICATE OF SERVICE

The undersign certifies that he served a copy of the foregoing answer on Susan Tobin, trial attorney for Plaintiff, through the Court's electronic filing system on this 23rd day of April, 2012.

/s/ Loren L. Braverman